

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

AARON LEE NEWTON,

Defendant and Appellant.

E046231

(Super.Ct.No. RIF137601)

OPINION

APPEAL from the Superior Court of Riverside County. Dennis A. McConaghy, Judge. (Retired judge of the Riverside Super. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Affirmed with directions.

Diane E. Berley, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Gary W. Schons, Assistant Attorney General, Gil Gonzalez, and Kelley Johnson, Deputy Attorneys General, for Plaintiff and Respondent.

On July 12, 2007, the Riverside County District Attorney filed an amended felony complaint charging defendant and appellant Aaron Lee Newton with (1) oral copulation and sexual penetration with a child who is 10 years old or younger under Penal Code¹ section 288.7, subdivision (b) (count 5); (2) oral copulation with a child under the age of 14 or more than 10 years younger than defendant under section 288a, subdivision (c)(1) (count 6); and (3) lewd and lascivious acts on a child under the age of 14 under section 288, subdivision (a) (count 7). The amended felony complaint also charged codefendant Lawrence Newton with (1) two counts of forcible sodomy under section 269, subdivision (a)(3) (counts 1 & 2); (2) sexual penetration by force under section 269, subdivision (a)(5) (count 3); and (3) oral copulation with a child 10 years old or younger under section 288.7, subdivision (b) (count 4).

On May 5, 2008, the amended felony complaint was orally amended to add counts 8 and 9, both of which were violations of section 288, subdivision (a). On the same day, defendant pled guilty to three counts of violating section 288, subdivision (a)—counts 7, 8 and 9.² The trial court sentenced defendant to state prison for 12 years.

¹ All further statutory references are to the Penal Code unless otherwise specified.

² Codefendant Lawrence Newton pled guilty to committing a lewd and lascivious act upon a child under the age of 14 under section 288, subdivision (a), as charged in counts 1, 7 and 8 (counts 7 and 8 were originally counts 2 and 3 in the amended felony complaint). Although Lawrence Newton appealed the judgment, he subsequently filed an abandonment of appeal and on October 6, 2008, we ordered that the appeal be dismissed.

On July 2, 2008, defendant filed a request for certificate of probable cause. The trial court granted defendant's request.

On appeal, defendant contends that his guilty plea must be reversed because the trial court failed to clearly and accurately specify the counts to which he was pleading guilty. For the reasons set forth below, we shall affirm the judgment, as modified.

I

STATEMENT OF FACTS

Between April 13, 2006 and June 18, 2007, defendant committed lewd and lascivious acts upon Jane Doe, a child who was under the age of 14, with the intent to arouse or gratify the lust of either himself or the child.³

II

ANALYSIS

Defendant's sole contention on appeal is that his plea is invalid because the trial court "fail[ed] to clearly and accurately specify the counts to which [defendant] was pleading guilty" For the reasons set forth below, we disagree.

A. Background

The original complaint, filed on June 29, 2007, consisted of four counts against codefendant Lawrence Newton: (1) counts 1 and 2—forcible sodomy under section 269, subdivision (a)(3); (2) count 3—sexual penetration by force under section 269,

³ Because defendant pled guilty prior to a preliminary hearing, the facts are taken from the complaint. At the plea hearing, the parties stipulated that the complaint established the factual basis for the plea.

subdivision (a)(5); and (3) count 4—oral copulation with a child 10 years old or younger under section 288.7, subdivision (b).

On July 12, 2007, the complaint was amended to include defendant and three additional counts. As to codefendant, Lawrence Newton, the counts remained the same. However, as to defendant, the complaint alleged: (1) count 5—oral copulation and sexual penetration with a child 10 years old or younger under section 288.7, subdivision (b); (2) count 6—oral copulation with a child under the age of 14 or more than 10 years younger than defendant under section 288a, subdivision (c)(1); and (3) count 7—lewd and lascivious acts on a child under the age of 14 under section 288, subdivision (a).

Thereafter, according to a minute order from May 5, 2008, the amended complaint was orally amended to add codefendant, Lawrence Newton, to count 7 under section 288, subdivision (a) (lewd and lascivious acts on a child under the age of 14). Additionally, the court allowed the addition of count 8, which was a violation of section 288, subdivision (a), as to both defendants.

The reporter's transcript from the May 5, 2008, hearing indicates that defendant pled guilty to counts 7, 8 and 9, which were all violations of section 288, subdivision (a), and that counts 8 and 9 were "added" counts with the same victim. The plea form, which defendant signed, also indicates that defendant pled guilty to counts 7, 8 and 9, and that all three counts were for violations of section 288, subdivision (a).⁴

⁴ The May 5, 2008, minute order erroneously indicates that defendant pled guilty to counts 6, 7 and 8, instead of counts 7, 8 and 9.

The abstract of judgment indicates that defendant pled guilty to counts 6, 7 and 8, and that count 6 was a violation of section 288a, subdivision (c)(1), and counts 7 and 8 were violations of section 288, subdivision (a).

B. The Record Shows That Defendant Pled Guilty to Three Counts of Committing Lewd Acts Upon a Child, a Violation of Section 288, Subdivision (a)

Defendant claims that his plea must be reversed because his due process rights were violated “based on the trial court’s failure to specify which counts, and what offense, he was pleading guilty to.” We disagree with defendant’s assessment of the record.

As discussed above, both the plea agreement and the court’s oral pronouncement reflect that defendant pled guilty to three counts of committing a lewd and lascivious act upon a child under the age of 14, in violation of section 288, subdivision (a). Notwithstanding, defendant claims that “[t]he record is unclear and contradictory as to what counts [defendant] pled guilty” because the minute order and abstract of judgment reflect that defendant pled guilty to counts 6, 7 and 8, not counts 7, 8 and 9. Where there is a discrepancy between the trial court’s oral pronouncement of judgment and the minute order, or the abstract of judgment, the court’s oral pronouncement controls. (*People v. Mitchell* (2001) 26 Cal.4th 181, 185-186; *People v. Mesa* (1975) 14 Cal.3d 466, 471, superseded by statute on other grounds as stated in *People v. Turner* (1998) 67 Cal.App.4th 1258, 1268.) “Entering the judgment in the minutes being a clerical function [citation], a discrepancy between the judgment as orally pronounced and as entered in the

minutes is presumably the result of clerical error.” (*People v. Mesa, supra*, 14 Cal.3d at p. 471.) The court’s oral pronouncement of judgment therefore controls over its minute order and the abstract of judgment. (*Ibid.*) “Courts may correct clerical errors at any time, and appellate courts . . . that have properly assumed jurisdiction of cases have ordered correction of abstracts of judgment that did not accurately reflect the oral judgments of sentencing courts. [Citations.]” (*People v. Mitchell, supra*, 26 Cal.4th at p. 185.) As such, we conclude the minute order and abstract of judgment should be modified to correctly reflect that defendant pled guilty to counts 7, 8 and 9, in violation of section 288, subdivision (a).

III

DISPOSITION

The court is directed to modify the court minutes for the May 5, 2008, hearing, and the abstract of judgment, to correctly reflect that defendant pled guilty to counts 7, 8 and 9, in violation of section 288, subdivision (a). In all other respects, the judgment is affirmed. The court is directed to prepare an amended abstract of judgment in accordance with this disposition and to deliver it to the Department of Corrections and Rehabilitation.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

/s/ McKinster
J.

We concur:

/s/ Hollenhorst
Acting P.J.
/s/ Gaut
J.